to the general rule which denies recovery to a plaintiff guilty of contributory negligence.

The bar raised by contributory negligence rests on the policy of making the loss lie on a person who has been instrumental in bringing it upon himself. See 3 HARV. L. REV. 269. *Prima facie* the last chance rule seems to shift the loss to the defendant merely because he happens to be the last wrongdoer. The argument is often made, however, that the negligence of a defendant occurring under the circumstances created by the plaintiff's prior negligence is more serious than that of the plaintiff. But it is hard to see how a higher degree of care could be demanded of the defendant by virtue of the prior negligence unless he had knowledge of it. *Cf.* THOMP. COM. NEG., § 232. If such knowledge were made essential, the statement of the rule would take its strongest form. Even so it is open to two objections. In the first place, it is based on the discredited theory of comparative negligence, which allows recovery to a negligent plaintiff when the defendant's negligence is "gross," and his own but "ordinary" or "slight." See *Cicero, etc., Ry.* v. *Menxer*, 160 Ill. 320. And secondly, thus qualified, it would rarely prove of practical value, for if the defendant had the required knowledge his tort generally would amount to an intentional tort to which the rules of contributory negligence have no application. See SPRAGUE, CONTRIB. NEG., 7. The last chance rule as a distinct doctrine accordingly seems to deserve no place in the law.

SALE BY OFFICER OR STOCKHOLDER OF INFLUENCE IN CORPORATION. — A seemingly lax view of the duty owed by the officers of a corporation to the stockholders and by the stockholders to each other is presented by a late decision in New York. The plaintiff contracted to buy part of the defendants' stock and to use his vote and influence to retain in office the existing board of directors, in consideration of the defendants' promise to procure for the plaintiff the position of cashier of the corporation for five years and to repurchase the stock at a stipulated price should he be sooner discharged. The plaintiff made the purchase and received the appointment, but was discharged before the time expired, and brought an action for the defendants' refusal to repurchase the stock. It was held, two justices dissenting, that the contract was not void as against public policy. *Bonta* v. *Gridley et al.*, 78 N. Y. Supp. 961 (App. Div. 4th Dept.).

This contract seems objectionable in that both parties gave up, for benefits to themselves as individuals, their independent judgment as stockholders regarding the election of officers, and in that the plaintiff also sold his influence as cashier. The general principle of law is, of course, that persons to whom the interests of others are committed, must act disinterestedly in behalf of the beneficiaries. *Oscanyan* v. *Arms Co.*, 103 U. S. 261. Officers of a corporation clearly fall within the scope of this principle. *Wardell* v. *U. P. R. R. Co.*, 103 U. S. 651, 658. Similarly, the community of interest subsisting between stockholders places each in a *quasi*-fiduciary relation to the others, and sound policy requires that each act *bona fide* for the prosperity of the corporation, uninfluenced by promises of personal reward. *Woodruff* v. *Wentworth*, 133 Mass. 309. Accordingly the principal case seems insupportable, and it is opposed to the weight of authority. *Guernsey* v. *Cook*, 120 Mass. 501; *Noel* v. *Drake*, 28 Kan. 265. How far these prin-

ciples operate to restrain *bona fide* combinations among stockholders to influence corporate management where no such collateral inducements are present is an unsettled question. That understandings not having the force of contract may exist among them is undoubted. Most jurisdictions also allow actual contracts — of which voting trusts are the most common example — in which the parties are benefited not directly as individuals, but as stockholders. *Faulds* v. *Yates*, 57 Ill. 416; see MOR. PRI. CORP., 2d ed., § 477 n; 15 HARV. L. REV. 756.

The court in the principal case suggests that there was no affirmative proof that the contract was made in bad faith or would be inimical to the interests of the corporation. It is submitted, however, that if transactions of the class to which this contract belongs are opposed to public policy, the courts, in a particular case, should not inquire into the wisdom of the ultimate objects sought by such means. Moreover, if such inquiry were allowable, it would seem that the burden of upholding the contract should rest with the party claiming under it. *West* v. *Camden*, 135 U. S. 507, 514. The court also argues that a plaintiff who has himself performed should not be deprived of his remedy. This position apparently overlooks the fact that, in determining the validity of such contracts, the courts should consider not the equity of the transaction as between the parties, but the protection of corporate interests in general. Since they are illegal transactions, the plaintiff and the defendant are *in pari delicto*, and the law will leave the loss where it falls.

SLEEPING-CAR COMPANIES NOT INSURERS OF PASSENGER'S LUGGAGE. — It has been urged with much force that a sleeping-car is practically an inn, and that therefore the same rules of liability should be applied in both cases. The absolute liability of a common carrier for goods delivered to it, and the similar liability of an innkeeper for all goods of his guest *infra hospitium*, arose in times when the dangers from dishonesty were great. The law, recognizing the peculiar opportunities of such public servants to defraud their patrons, owing to the helpless position of the latter, imposed severe liabilities. *Gordon* v. *Hutchinson*, 1 W. & S. (Pa.) 285; *Morgan* v. *Ravey*, 6 H. & N. 265. Modern courts have upheld this doctrine, though the reasons on which it is based are to-day hardly so strong. Once granting the doctrine, it seems difficult to exclude from it the case of the sleeping-car, especially since such a conveyance furnishes unusual opportunities for theft and since fault on the part of the company's servants is peculiarly difficult to prove. Theoretically, then, the cases would seem to fall within the rule. Practically, were the company held as an insurer, it would undoubtedly reduce the dangers of theft, with but slight increase of expense to the company.

This question was lately raised in the case of *Pullman, etc., Co.* v. *Hatch*, 70 S. W. Rep. 771 (Tex., Civ. App.). The court declined to hold the company as an insurer, and decided that it was liable only for loss due to the negligence or to the theft of its employees. This represents the almost uniform law. *Pullman, etc., Co.* v. *Gavin*, 93 Tenn. 53; *Pullman, etc., Co.* v. *Smith*, 73 Ill. 360. The same rule has generally been applied to passenger steamboats. *Steamboat Crystal Palace* v. *Vanderpool*, 16 B. Mon. (Ky.) 302. Only one case has been found which holds a sleeping-car company to an insurer's liability. *Pullman, etc., Co.*, v. *Lowe*, 28 Neb. 239.